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10/749,979	12/30/2003	Geoffrey W. Peters	42P18210	9699
59796	7590	03/05/2008	EXAMINER	
INTEL CORPORATION			MONIKANG, GEORGE C	
c/o INTELLEVATE, LLC				
P.O. BOX 52050			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402			2615	
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			03/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/749,979

Applicant(s)

PETERS ET AL.

Examiner

George C. Monikang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,12,16,20-40,42,44 and 54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7-11,13-15,17-19,41,43 and 45-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/30/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 7, 17-19, 41, 45 & 50-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Mastronardi, US Patent 6,346,951 B1.

3. Re Claim 1, Mastronardi discloses an apparatus comprising: a microphone to receive ambient audio; a first database to store audio corresponding to ambient audio that may be received by the microphone (col. 4, lines 41-47); an acoustic analyzer to identify the received ambient audio by comprising it with audio stored in the first database (col. 7, lines 23-28); a second database to store content entries associated with the identified audio (col. 9, lines 56-65); and a content parser to select content from entries stored in the second database that is associated with the identified audio for presentation of the content to a user (abstract), wherein the content selected by the content parser for presentation to a user is an image (abstract).

4. Re Claim 3, Mastronardi discloses the apparatus to claim 1, wherein the microphone is wirelessly coupled to the acoustic analyzer (col. 4, lines 41-47).

Re Claim 7, Mastronardi discloses the apparatus according to claim 1, discloses wherein the content selected by the content parser for presentation to the user is graphical (col. 7, lines 23-32).

Re Claim 17, Mastronardi discloses the apparatus according to claim 1, wherein the user listens to the ambient audio and receives the presentation of the content simultaneously (abstract).

Re Claim 18, Mastronardi discloses the apparatus according to claim 17, wherein the presentation of the content is synchronized with the ambient audio (col. 4, lines 41-47).

Re Claim 19, Mastronardi discloses the apparatus according to claim 1, wherein the content is entertainment content (abstract).

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Claim 41 has been analyzed and rejected according to claim 1.

Claim 45 has been analyzed and rejected according to claim 7.

Claim 50 has been analyzed and rejected according to claim 17.

Claim 51 has been analyzed and rejected according to claim 18.

Claim 52 has been analyzed and rejected according to claim 19.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 5 & 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mastronardi, US Patent 6,346,951 B1 as applied to claim 1 above, in view of Fraunhofer Institute of Integrated Circuits IIS "AudioID – Automatic Identification / Fingerprinting of Audio." (This reference is cited in IDS filed 12/30/2003).

8. Re Claim 5, Mastronardi discloses the apparatus to claim 1, but fails to disclose wherein the acoustic analyzer is to provide a fingerprint for the received ambient audio and to compare the fingerprint to fingerprints stored in the first database. However, Fraunhofer does (page 2).

9. Taking the combined teachings of Mastronardi and Fraunhofer as a whole, one skilled in the art would have found it obvious to modify the apparatus of Mastronardi with wherein the acoustic analyzer is to provide a fingerprint for the received ambient audio and to compare the fingerprint to fingerprints stored in the first database as taught in Fraunhofer (page 2) to secure audio-related intellectual property.

Claim 43 has been analyzed and rejected according to claim 5.

1. Claims 8-11, 13-14, 46-49 & 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mastronardi, US Patent 6,346,951 B1 as applied to claim 1 above, in view of Bates et al, US Patent 6,760,635 B1.

Re Claim 8, Mastronardi discloses the apparatus according to claim 1, but fails to disclose wherein a user is able to select at least one type of the content for presentation. However, Bates et al does (col. 4, lines 17-24).

Taking the combined teachings of Mastronardi and Bates et al as a whole, one skilled in the art would have found it obvious to modify the apparatus according to Fraunhofer with wherein a user is able to select at least one type of the content for presentation as taught in Bates et al (col. 4, lines 17-24) so that the apparatus can be more user friendly.

Claim 9 has been analyzed and rejected according to claim 8.

Re Claim 10, the combined teachings of Mastronardi and Bates et al disclose the apparatus according to claim 9, wherein the pre-selection may be different for different audio (Bates et al, col. 4, lines 17-30).

Re Claim 11, the combined teachings of Mastronardi and Bates et al disclose the apparatus according to claim 1, further comprising a display device, wherein the display device includes a computer (Bates et al, col. 4, lines 17-20).

Re Claim 13, the combined teachings of Fraunhofer and Bates et al disclose the apparatus according to claim 1, wherein the acoustic analyzer and the content parser are local to where the ambient audio may be listened to by a user and to where the content may be received by a user (Bates et al, col. 4 lines 13-17).

Re Claim 14, which further recites, "Wherein the acoustic analyzer and the content parser are remote from where the ambient audio may be listened to by a user and from where the content may be received by a user." Fraunhofer and Bates et al do not explicitly disclose the acoustic analyzer and content parser being remote from where the ambient audio may be listened as claimed. Official notice is taken that both the concept and advantages of a device being remote from where the ambient audio may be listened is well known in the art. It would have been obvious to use a acoustic analyzer and content parser being remote from where the ambient audio may be listened to provide a more dynamic apparatus.

Claim 46 has been analyzed and rejected according to claim 8.

Claim 47 has been analyzed and rejected according to claim 8.

Claim 48 has been analyzed and rejected according to claim 10.

Claim 49 has been analyzed and rejected according to claim 11.

Claim 53 has been analyzed and rejected according to claim 11.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mastronardi, US Patent 6,346,951 B1 as applied to claim 1 above, in view of Han, US Patent 6,591,118 B1.

Re Claim 15, Mastronardi discloses the apparatus according to claim 1, but fails to disclose wherein the content is presented remotely from the ambient audio. However, Han does (fig. 1: 116).

Taking the combined teachings of Mastronardi and Han as a whole, one skilled in the art would have found it obvious to modify the apparatus according to Mastronardi with wherein the content is presented remotely from the ambient audio as taught in Han (fig. 1: 116) so that the apparatus can be more dynamic.

#### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Monikang whose telephone number is 571-270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George Monikang

2/22/2008

  
VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER